

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BELLSOUTH	)	
MOBILITY, LLC D/B/A CINGULAR	)	
WIRELESS - KENTUCKY FOR	)	
ISSUANCE OF A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND	)	
NECESSITY TO CONSTRUCT A	)	
WIRELESS COMMUNICATIONS	)	
FACILITY AT ROUGH AND TOUGH	)	
ROAD, PRESTONSBURG, KENTUCKY	)	CASE NO. 2004-00413
41653 OR, IN THE ALTERNATIVE, AN	)	
ORDER REQUIRING CO-LOCATION	)	
ON REASONABLE TERMS AND	)	
CONDITIONS IN THE WIRELESS	)	
COMMUNICATIONS LICENSE AREA IN	)	
THE COMMONWEALTH OF KENTUCKY	)	
IN THE COUNTY OF FLOYD	)	
SITE NAME: BRAINARD	)	

O R D E R

On October 22, 2004, New Cingular Wireless PCS, LLC (“Cingular”)<sup>1</sup> applied for a Certificate of Public Convenience and Necessity to construct a cellular communications facility in Floyd County, Kentucky at the site referred to as Brainard. In its application, Cingular requested, in the alternative, that the Commission require that East Kentucky Network, LLC (“East Kentucky”)<sup>2</sup> be made a party to the application proceedings and be directed to permit the collocation of Cingular’s proposed cellular

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<sup>1</sup> BellSouth Mobility, LLC d/b/a Cingular Wireless – Kentucky submitted the application. This entity has subsequently been reorganized as New Cingular Wireless PCS, LLC. To avoid confusion, all references in this Order to “Cingular” refer to New Cingular Wireless PCS, LLC or its predecessor in interest.

<sup>2</sup> East Kentucky Network, LLC also has the assumed name of Appalachian Cellular and Appalachian Wireless, LLC, according to current records in the Office of the Secretary of State.

facilities on East Kentucky's existing cellular facility on reasonable terms and conditions. East Kentucky's existing cellular facility<sup>3</sup> is located 982 feet from the proposed location of Cingular's new cellular facility. Cingular seeks collocation in lieu of new construction.

Cingular moved for joinder of an additional party on January 12, 2005. On February 4, 2005, East Kentucky filed its response. East Kentucky argues generally that it should not be made a party to the proceedings because Cingular has failed to make a "good faith effort" to negotiate the collocation issue with East Kentucky.

On February 10, 2005, based upon East Kentucky's response, Cingular moved to hold all matters in abeyance to allow direct negotiations between the two entities regarding Cingular's request to collocate on East Kentucky's Rough-N-Tough Site. East Kentucky responded, stating that the Commission should not provide "oversight of the parties' collocation negotiations." The Commission granted the motion on March 1, 2005 and mandated written progress reports at certain intervals during the negotiations. Cingular and East Kentucky have negotiated without any other Commission involvement. They filed three separate progress reports.

On July 25, 2005, Cingular moved to schedule a public hearing and issue a procedural schedule. On August 8, 2005, East Kentucky filed its response thereto.

In their progress reports and pleadings, Cingular and East Kentucky have acknowledged that they and the issue of collocation are jurisdictional to the Commission. The record shows that Cingular and East Kentucky have resolved all

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<sup>3</sup> Case No. 2004-00190, The Application of East Kentucky Network Limited Liability Company For the Issuance of a Certificate of Public Convenience and Necessity to Construct a Tower in Floyd County, Kentucky (Ky. PSC July 7, 2004). This facility is referred to as "Rough-N-Tough Site."

issues to collocation except the per annum rental fee for collocation of the proposed cellular facilities in and on East Kentucky's existing cellular facility.

On August 12, 2005, Cingular filed its first information request to East Kentucky. East Kentucky has not responded to this request.

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. Cingular's motion for joinder of an additional party is granted.
2. East Kentucky is hereby made a party to the proceedings herein for all purposes.
3. Within 20 days of the date of this Order, East Kentucky shall respond to Cingular's first set of information requests. East Kentucky shall serve its response upon Cingular and shall file 8 copies of its response with the Commission.
4. An informal conference shall be held on November 16, 2005 at 10:00 a.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky to discuss resolution of any remaining issues related to the proposed collocation of facilities.

Done at Frankfort, Kentucky, this 17<sup>th</sup> day of October, 2005.

By the Commission

ATTEST:



Executive Director